

AG Contract No.: KR04-1826TRN
ADOT ECS File No.: JPA 04-068
Section: Needle Mountain
Welcome Center
TRACS No.: H5064 03C
Budget Source Item No.: 75306

INTERAGENCY AGREEMENT

BETWEEN
THE DEPARTMENT OF TRANSPORTATION
AND
THE OFFICE OF TOURISM

THIS AGREEMENT is entered into this date November 23, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, among the STATE OF ARIZONA, (the "State"), acting by and through its DEPARTMENT OF TRANSPORTATION ("DOT"), and THE OFFICE OF TOURISM (the "AOT").

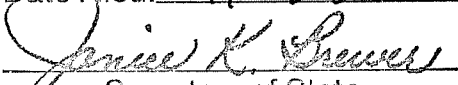
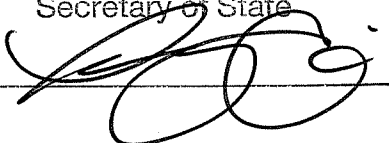
I. RECITALS

1. The DOT is empowered by Arizona Revised Statutes Sections 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The AOT is empowered by Arizona Revised Statutes Section 41-2305, respectively, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the State.

3. Congress has authorized appropriations for twelve eligible transportation enhancement project categories. Category #4 is for Scenic or Historic Highway Programs, including the Provision of Tourist and Welcome Center Facilities.

4. Incident to the DOT's programmed construction of the Needle Mountain Rest Area (the "Rest Area"), the AOT has applied for and acquired a "Transportation Enhancement Grant". Wherein the AOT requests the DOT incorporate the design and construction of a Welcome Center as a part of the DOT's construction of the Needle Mountain Rest Area, per agreed upon plans. The parties agree that the DOT will design and construct the Welcome Center as part of its Rest Area construction and the AOT will operate and maintain upon completion, hereinafter referred to as "the Project", at an estimated total cost of \$606,000.00, available through a Federal Transportation Enhancement (FTE) grant under TRACS No. H5064 03C. At no time shall the DOT be considered the owner or operator of, or locator for the AOT Welcome Center.

NO. 27844
Filed with the Secretary of State
Date Filed: 11-23-05

Secretary of State
By: 

5. The survey of the Project has been completed; and as required, submitted to the Federal Highway Administration (FHWA) for its approval. The DOT's funding participation for the Project is contingent upon the State acquiring all required easements from the Bureau of Land Management (BLM), owners of the property, *prior* to advertisement of the Project.

6. The work embraced in this Agreement, and the estimated costs are as follows: Design and construct a Welcome Center within the boundary of the Needle Mountain Rest Area on Interstate 40.

Construction TRACS No.: H5064 03C

Estimated Federal Aid Funds @ 94.3% \$571,457.00

Estimated DOT Funds at a minimum of 5.7% \$ 34,543.00

Total Estimated Construction Cost (incl. 15% CE Cost): **\$606,000.00**

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. DOT shall:

a. Upon execution of this Agreement, agree to be authorized agent for the AOT, for the design and construction of the Needle Mountain Welcome Center.

b. Prepare to DOT standards, design plans, specifications and other such documents required for construction bidding and construction of the Project. Submit to the AOT for review and concurrence. Upon receipt of written concurrence by the AOT of said plans, incorporate the design and construction of the Project as part of its programmed construction of the Needle Mountain Rest Area, per agreed upon plans.

c. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

d. Upon approval by FHWA of the contract documents and funding established from the DOT, proceed to advertise for, receive and open bids with the aid and consent of the AOT and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA on behalf of the AOT to perform, complete, accept and pay for in accordance with the instructions and requirements of the AOT, the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the DOT. Request the maximum federal funds be available including design, construction, construction engineering and administration costs.

e. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the DOT.

f. Obtain the necessary easements for construction of the Project. Said project will not be bid and/or advertised without prior acquisition of the required easements from BLM. Should BLM refuse to grant said easements, this contract may be terminated by DOT and no liability shall accrue to DOT in the event this occurs, nor shall the DOT be obligated or liable for any payment and/or damages as a result of said termination.

g. Not be obligated to maintain the Project should the AOT fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. AOT shall:

- a. Upon execution of this Agreement, designate the DOT as authorized agent for AOT.
- b. Review the plans and provide comments to the DOT.
- c. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of work requested by the AOT. Such changes require the prior approval of the DOT.
- d. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the AOT.
- e. Upon completion of construction of the Project provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance and repairs including but not limited to all interior and exterior components, maintaining healthy landscaping within one (1) feet of the Project if applicable, the operation and cost of the irrigation system including all testing, adjusting, and repairing of the irrigation system, and shall furnish all electrical power necessary to operate the irrigation system and pedestrian lighting, as necessary, and maintain the sidewalks, keeping it free of debris and provide safe access for all pedestrians to the Arizona Welcome Center at AOT's expense.
- f. Landscape maintenance consists of the care of all landscaping within one (1) feet of the Project if applicable, in accordance with accepted horticultural practices; keeping all areas free of weeds; undesirable grasses and litter; applying irrigation water; furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests; pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the Project.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of said Project and reimbursements; provided, however, that this Agreement, except any provisions for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a Project construction contract, upon thirty (30) days written notice to the other parties herein. It is understood and agreed that, in the event that AOT cancels this Agreement, the DOT shall in no way be obligated to maintain AOT facilities and Welcome Center.

2. This Agreement is contingent upon the DOT obtaining all required easements from the BLM *prior* to advertisement of the Project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the DOT and the AOT under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the DOT and the AOT at the end of the period for which the funds are available. No liability shall accrue to the DOT and the AOT in the event this provision is exercised, and the DOT and the AOT shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007

Arizona Office of Tourism
Attn: Margie A. Emmermann, Director
1110 W. Washington, Suite 155
Phoenix, AZ 85007

10. Pursuant to Arizona Revised Statutes Section 11-952.D., attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

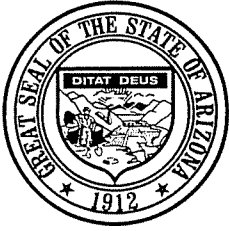
ARIZONA OFFICE OF TOURISM

STATE OF ARIZONA

Department of Transportation

By 
MARGIE A. EMMERMANN
Director

By 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: 602-542-8859
Fax: 602-542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1826TRN (**JPA 04-068**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED November 10th, 2005.

TERRY GODDARD
Attorney General


JEFFREY T. MURRAY
Assistant Attorney General

JTM:dgr
Attachment
934281